I was asked at the hearing, in view of the numerous conflicting views which have been expressed with regard to other questions which arise under the sub-section, to express my views upon the interpretation of the sub-section generally.

Other difficulties have arisen upon the question of the explanation expected of the accused and of its effect when given.

It has been seen that the English Act required the explanation to be given to the Magistrate, presumably at the trial. This was, of course, especially at a time when accused persons could not normally give evidence. In the form in which the provision has been adapted in India and in this Colony it seems to have been assumed that the explanation must be given to the person who finds the goods in the possession of the accused, not necessarily a policeman; (see the Indian case of *Queen-Empress v. Dhanjibhai*[2]). In India accused persons still cannot give evidence. Further, to call for an explanation from an accused person would not be in accord with the provisions of the Criminal Procedure Code. If this tacit assumption is correct (I have not found a case where the matter was considered judicially), it must be a question of a statement made at or about the time that the goods were found in possession of the accused. If, as is usually the case, such a statement, if made, is made to a police officer it will frequently, unless it is taken to be an exception to the general rule, or even generally, be excluded by the provisions of the Evidence Ordinance or of the Criminal Procedure Code. If it is not taken as being an exception to the general rule an impossible situation arises. The Court cannot decide that the accused has not given a satisfactorily account of how he came by the goods when there is a possibility that he made an explanation which could not be given in evidence. There have been conflicting decisions on the question whether or no the Minor Offences Ordinance creates an exception. I cannot sitting alone resolve the difficulty, though I incline to the view that the answer should be in the affirmative. There have also been conflicting views as to the scope of section 124 of the Criminal Procedure Code. As I have said, I do not think this of decisive importance. The difficulty arises from the mere possibility of an inadmissible statement having been made. If the general assumption that the explanation should not be made to a Magistrate is correct, it seems very doubtful whether the sub-section can be used in any but exceptional cases. It is to be hoped that the sub-section will, if it is to be retained, be redrafted in the near future.

Conviction quashed.

In re ESTATE OF LEE SIEW KOW, DECD.; GAN ENG NEO (w) and 2 ORS. v. YEO SIEW NEO (w).

[Orig. Civ. Juris. (Murray-Aynsley, C.J.)
November 9, 1951]

[Singapore — Probate No. 352 of 1951]

Rules of the Supreme Court, O. 54, r. 20(2)(c) — Practice — Particulars — Further and better — Refusal to give — Pleadings — "Material facts" in — Meaning of.

The plaintiffs petitioned for Letters of Administration to the Estate of Lee Siew Kow deceased to which the defendant, who claimed to be a secondary wife, entered a Caveat. The claim was contested and it was ordered that the matter proceed as an action under Order 54 Rule 20(2)(c). The relevant paragraph of the Defence is set out in the Judgment.

The plaintiffs applied by letter for further and better particulars of "the co-habitation" and of "the friends and relatives" by whom recognition was alleged to have been accorded. These were refused on the grounds that it was a matter of evidence and would also entail the disclosure of the names of the defendant's witnesses.

The plaintiffs took out a Summons in Chambers for delivery of further and better particulars within 7 days of the Order to be made thereon. These particulars are also fully set out in the Judgment.

The plaintiffs further asked for an order that in default of delivery of these particulars paragraph 2 of the Defence be struck out and for the costs of the application.

The hearing of the Summons was adjourned into Open Court before the Honourable the Chief Justice who made an order in terms of the Summons in Chambers.

Cited for the plaintiffs: *Odgers* on Pleadings & Practice 13th ed. pp. 135, 136, 139; *Lew Ah Lui v. Choa Eng Wan* (1935) S.S.L.R. 166; (1935) M.L.J. 78; *Philipps v. Philipps* 4 Q.B.D. 127; *Palmer v. Palmer* (1892) 1 Q.B. 319; *Mariott v. Chamberlin* 17 Q.B.D. 154, 161; *Bishop v. Bishop* (1901) P. 326.

Cited for the defendant: *Hooton v. Dalvey* (1907) 2 K.B. 18; *Nash v. Layton* (1911) 2 Ch. 71; *Wooton v. Siever* (1913) 3 K.B. 499; *Mariott v. Chamberlin* 17 Q.B.D. 154, 161, 162.

Case referred to:—

(1) *Philipps v. Philipps* 4 Q.B.D. p. 139.

APPLICATION for further and better particulars.

R. H. Green for the plaintiffs-petitioners.

Osborne Jones for the defendant-caveatrix.

Cur. Adv. Vult.

Murray-Aynsley, C.J. : — This application for further and better particulars arises out of proceedings in which the plaintiffs seek to obtain Letters of

Administration of the estate of one Lee Siew Kow deceased and the defendant claims that she is a widow of the deceased and as such seeks to share in the grant of Letters of Administration.

The plaintiffs deny that she is a widow and pleadings have been delivered. The claim of the defendant is set out in paragraph 2 of the Defence which reads as follows :—

"2. As to paragraphs 3 and 5 thereof, the defendant/caveatrix says she too is a lawful widow of the deceased having met him in or about 1934, since which year and till his death the defendant/caveatrix co-habited with the deceased as his lawful wife and was recognized as such by his friends and relations. The defendant/caveatrix being a widow as aforesaid of the deceased is therefore entitled to share in the proceeds of the estate of the deceased and should be joined as a party in the petition for letters of administration herein."

On this the plaintiffs have asked for further and better particulars in the following terms :—

"Under Paragraph 2: (1) Of the dates and addresses at which the alleged co-habitation is alleged to have taken place and of the periods, if such there be, of such co-habitation.

"(2) Of the names of the deceased's friends and relatives who are alleged to have recognized the Defendant Caveatrix as the lawful wife of the deceased and of the times, places and manner in which such alleged recognition was afforded."

I do not think that any difficulty arises as to (1).

There is some difficulty as to (2). The basic principle is that the pleading must contain "a statement in a summary form of the material facts.... but not the evidence by which they are to be proved."

The meaning of "material facts" is explained in the often cited passage of Cotton, L.J., in *Philipps v. Philipps*[1]; "the pleading .... should state those facts which will put the defendants on their guard and tell them what they have to meet."

One has in these cases to consider what the party pleading sets out to prove. Then one has to consider whether it has been set out with sufficient precision. The parties by their pleadings define the issues of fact which the Court will have, ultimately, to decide. The defendant alleges that she was recognized as a wife by the friends and relations of the deceased. Whether this is relevant or not, or the extent to which it is relevant, does not concern us at this stage. What does concern us is that the defendant alleges recognition as a material fact. She appears to allege recognition by all the relatives and friends of the deceased. But in any event the significance of the recognition appears to depend on the status of the person alleged to have so recognized her, qua friend or qua relation. When it is alleged that someone else has done something the significance of which depends on the status of that person it appears to me that the pleading is lacking in precision if it fails to set out who the person is. The fact that it is impossible to be precise without disclosing the names of witnesses is immaterial.

I think that the plaintiffs are entitled to the particulars asked for.

Order in terms of summons.

Order accordingly.

HO SENG SENG v. REX.

[App. Cr. Juris. (Brown, Ag. C.J.) August 22, 1951]

[Singapore — Magistrate's Appeal No. 87 of 1951]

Dangerous Drugs Ordinance, 1951, ss. 6 and 37 — Possession — Onus of proof — Words "control" and "custody" — Meaning of.

In this case the appellant was charged and convicted by the learned District Judge of possession 385½ tahils of raw opium an offence punishable under section 6 of the Dangerous Drugs Ordinance. The prosecution proved that when arrested the appellant was carrying a basket and on examination of its contents there was found to be over 30 pounds of opium.

The learned District Judge took the view that the prosecution having proved that the opium was in the basket which the appellant was carrying, section 37(d) of the Ordinance had the effect of shifting the onus to the appellant to prove that he did not know that it was there.

The appellant who was sentenced to three years rigorous imprisonment appealed on the grounds inter alia that the learned District Judge had misdirected himself upon the burden of proof.

Held, that (1) the onus of proving that the appellant knew that the parcel he was carrying contained a dangerous drug was upon the prosecution; (2) that the learned District Judge had misdirected himself upon the burden of proof.

Appeal allowed, conviction and sentence quashed.

Cases referred to :—

(1) *Wong Hock Lay v. Rex* Magistrate's Appeal No. 57 of 1949 (unreported).

(2) *Toh Ah Loke v. Rex* (1949) M.L.J. 54.

MAGISTRATE'S APPEAL.

M. B. Brash for the appellant.

E. P. Shank (Crown Counsel) for the Crown.